Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-1065

JOHN NUVEEN & CO., INC., A CORPORATION, INVESTORS SYNDICATE OF AMERICA, INC., A CORPORATION, AND INVESTORS DIVERSIFIED SERVICES, INC., A CORPORATION,

Petitioners,

vs.

HENRY T. SANDERS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OBJECTIONS TO MOTION OF LEHMAN COMMERCIAL PAPER INCORPORATED FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITIONERS.

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Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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Pursuant to Rule 42(3) of the Rules of this Court the Respondent hereby objects to the motion of Lehman Commercial Paper Incorporated ("LCPI") for leave to file a brief as *amicus curiae* in support of the petition for a Writ of Certiorari. Respondent received a copy of LCPI's motion on February 2, 1976, and these objections are seasonably filed.

LCPI states as grounds for its motion that it is affected by developments in the federal securities laws affecting commercial paper and that the decision below "is the most significant judicial pronouncement in this area in recent years." Motion, 2.

LCPI apparently believes that it is newly and freshly affected by the supposed holding of the court below "in substance that commercial paper notes . . . may constitute 'securities' for purposes of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and that a commercial paper dealer is an 'underwriter of such securities subject to liability under Rule 10b-5 . . ." Motion, 2.

The ruling that commercial paper may constitute a security was made in a 1972 decision in this case by the Court of Appeals. *Sanders* v. *Nuveen*, 463 F. 2d 1075 (7th Cir. 1972), *cert. denied* 409 U. S. 1009.

There is no issue as to whether the seller of commercial paper in this case, John Nuveen & Co., Inc., was an underwriter of the commercial paper purchased by respondent and the class he represents. As the Court below stated, "The conclusion that Nuveen was an underwriter is not challenged." 524 F. 2d 1064, 1067 (7th Cir. 1975).

Movant not only does not make the showing required by Rule 42(3) in order to appear before this Court as *amicus*, but seeks to argue in this case one issue that was decided four years ago in a different decision, and another issue that is precluded by the acknowledged facts in the case.

Respondent suggests that LCPI's motion should be denied.

Respectfully submitted,

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